

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOHN LEE ERBY,

Plaintiff,

v.

Case No. 05-C-0485

WISCONSIN RESOURCE CENTER,

Defendant.

ORDER REQUIRING THE PLAINTIFF TO PAY THE INITIAL PARTIAL FILING FEE

The plaintiff, a state prisoner who is proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and requests leave to proceed in forma pauperis under 28 U.S.C. § 1915. The Prison Litigation Reform Act (PLRA) requires the plaintiff to pay the statutory filing fee of \$250.00 for this action in full. See 28 U.S.C. § 1915(b)(1).

Under the PLRA, the court must assess an initial partial filing fee of twenty percent of either the average monthly deposits to the plaintiff's prison account or the average monthly balance in the plaintiff's prison account for the six-month period immediately preceding the filing of the complaint, whichever is greater. After the initial partial filing fee is paid, the prisoner must make monthly payments of twenty percent of the preceding month's income until the filing fee is paid in full. 28 U.S.C. § 1915(b)(1). The agency having custody of the prisoner will collect the money and send payments to the court. No payment is required in months when the prisoner's preceding month's income is \$10.00 or less.

Plaintiff filed a certified copy of his prisoner trust account statement for the six-month period immediately preceding the filing of the complaint as required by 28 U.S.C. §

1915(a)(2). A review of this information reveals that the average monthly deposit to the plaintiff's prison account was thirty-one dollars and eighty-one cents (\$31.81) and the average monthly balance in the account was six dollars and fourteen cents (\$6.14). Thus, in accordance with the provisions of 28 U.S.C. § 1915(b)(1)(B), the plaintiff is required to pay an initial partial filing fee of six dollars and thirty-six cents (\$6.36). Failure to pay the initial partial filing fee within the time specified will result in dismissal of this matter with prejudice pursuant to Civil L.R. 41.3 (E.D. Wis.) and Fed. R. Civ. P. 41(b).

The PLRA provides that if a prisoner files more than three actions or appeals that are dismissed as frivolous or malicious or for failure to state a claim upon which relief can be granted, the prisoner will be prohibited from bringing any other actions in forma pauperis, unless the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). In the event that this action is dismissed for any of the above reasons, it will have an impact on the prisoner's ability to bring other actions in forma pauperis. Consequently, the plaintiff will be afforded an opportunity to dismiss this action to avoid incurring a "strike" under § 1915(g).

Notice to Plaintiff: If you do not wish to pay the filing fee as set forth in this order or do not wish to proceed with this action to avoid incurring a "strike" under §1915(g), you must notify the court by writing a letter to the clerk within twenty-one days of the date of this order, stating that you do not wish to prosecute this civil action. If you write such a letter, this case will be dismissed without prejudice. Voluntary dismissal will not be counted as a "strike" under § 1915(g).

Now, therefore,

IT IS ORDERED that within twenty-one days of the date of this order, the

plaintiff shall forward to the clerk of this court the sum of six dollars and thirty-six cents (\$6.36), as an initial partial filing fee.

Upon payment of the initial partial filing fee, the court will determine whether the action can continue to proceed in forma pauperis. The court will review the complaint to determine whether the action is frivolous or malicious and whether the complaint states a claim upon which relief can be granted. If the complaint does not meet these standards, the action will be dismissed.

IT IS FURTHER ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin, this 16th day of May, 2005.

BY THE COURT

s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
U. S. District Judge